

## Burlington Planning Commission

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*Yves Bradley, Chair  
Bruce Baker, Vice-Chair  
Lee Buffinton  
Emily Lee  
Andy Montroll  
Harris Roen  
Jennifer Wallace-Brodeur  
vacant, Youth Member*



# Burlington Planning Commission Minutes

## Regular Meeting

**Tuesday, February 9, 2016 - 6:30-8:00 P.M.**

**Conference Room #12, Ground Floor, City Hall, 149 Church Street**

Present: B Baker, Y Bradley, A Montroll, H Roen

Absent: E Lee, L Buffinton, J Wallace-Brodeur

Staff: D White, M Tuttle, E Tillotson, S Gustin, K Sturtevant, E Blackwood

### **I. Agenda**

There were no changes to the agenda.

### **II. Report of the Chair**

Y Bradley: Shared that there had been an Executive Committee meeting last week following the statute of limitations discussion. He has been advised that staff felt at a disadvantage with no opportunity to state their side of the ideas and solutions. Tonight's discussion should provide staff an opportunity to provide their perspective on the issue and propose solutions and answer questions. The minutes should reflect that the absent Commissioners are requested to pay close attention to the discussion of that item since they are not present to hear this.

### **III. Report of the Director**

D White: The office is now fully staffed. The City Council Ordinance Committee met last week to take up three amendments: mobile home parks, grocery stores in the enterprise zone, and major impact. Did not get to Major Impact, but passed the other two for public hearing on March 7. Council also heard a presentation by Don Sinex regarding the Burlington Town Center; after the presentation the council adjourned to executive session to examine the list of items to be addressed in the development agreement. A lot of other moving parts, including downtown parking which will be coming back to the Planning Commission in the next month or two.

### **IV. Public Forum**

Y Bradley opened the public hearing at 6:37 p.m.

Eli Lesser-Goldsmith, resident of Lakeview Terrace: Met with D White who suggested to come to the Commission. Agenda packet includes a letter regarding E Lesser-Goldsmith's two adjoining properties on Lakeview Terrace. Needs to have covered parking over shared driveway between properties, which present zoning does not allow. He hopes the Commission will consider possible solutions. This issue is especially pertinent to narrow lots and/or driveways currently located within setbacks.

A Montroll: Are there any present options?

D White: One solution is to join the two lots, which may or may not be good solution for the owner. Currently the ordinance doesn't anticipate anything other than a single family home being built in the middle of a lot.

E Lesser-Goldsmith: Also considered building a garage between the two houses to replace two existing subpar structures, but this would involve a PUD which makes it more complicated.

H Roen: Would this be addressed in form-based code?

D White: Yes, it is a scenario that would be recognized.

Y Bradley: Are there preliminary thoughts from staff about this issue?

D White: There has been discussion of some options, but there has not been time to give much thought to the matter.

Y Bradley: Thank you for bringing the issue to us. Staff will review and work on this issue when possible. E Lesser-Goldsmith will be notified when it will be a PC discussion.

Todd Rawlings, Housing Program Coordinator, CEDO Housing Office: Addressing the amendment affecting the North Avenue Co-op and suggest that the change recommended by the ordinance committee is necessary. The administration has been strong supporter of the amendment in order to assist the co-op.

Tim Bouvier, President of the North Avenue Co-op: The Co-op needs the ordinance changes in order to assist with clean-up and making the co-op a nice neighborhood so we need these ordinance changes. The Co-op passed a unanimous resolution in support of the amendment; T Bourvier present to discuss the co-op's level of support.

Ibnar Avilix: Would like to speak about planBTV South End—speak now or during the agenda item?

YBradley: Now is a time to speak about any item. It is your judgement.

I Avilix: Particularly concerned that mobility is a discussion that needs to be expanded. The Champlain Parkway was not a central part of the planBTV South End conversation, and it is now way short of 21<sup>st</sup> century standards. The transportation portion needs to be more clear for the public. The cover of planBTV South End showcases Speeder and Earls; showing a café within a rough industrial district seems to plant a flag welcoming gentrification. Would rather see innovation on the cover, such as Edlunds' machines, Burton snow boards, etc. All through this process he has been asking for manufacturing study which was left out of the plan. It needs to be a part of the conversation, but the plan is so far along in the conversation. He wonders if there is to be a segment on manufacturing. In regards to the question about whether form-based code would address the Lakeview Terrace issue, the theory and concepts have been established, but the ordinance has yet to be decided on by the City Council. It seems premature and uncomfortable to make decisions based on the assumption that the code will be approved.

## **V. ZA-16-02: Mobile Home Parks**

D White: This amendment which was considered by the City Council Ordinance Committee, who proposed a change to the standards for coverage. It was originally proposed for a maximum of 50 percent coverage, which is roughly what exists today; Ordinance Committee recommended 60 percent. The present day open area has been excluded in the coverage calculation because there was some thought that this parcel may be sold separately. The City Council Ordinance Committee made this recommendation and would like the Planning Commission to weigh in and indicate if they support this.

A Montroll: This all sounds fine but why the change in coverage?

D White: The Ordinance Committee decided to increase the coverage to 60 percent to allow for changes to take place in the park. Considering the entire park itself, and then removing the larger open area which may or may not remain a portion of the park, it was treated as a PUD, calculated just as a mobile home park without open space since the future of the open space portion is unknown.

On a motion by A Montroll, seconded by H Roen the Commission unanimously approved the change for the City Council's upcoming second reading.

## **VI. planBTV South End Draft**

M Tuttle: The Long Range Planning Committee has been working on updating the housing, arts and economic development elements of planBTV South End. In order to continue their work, wants to dedicate some time tonight for plan elements not previously covered so that the Committee has feedback when they're ready to discuss those sections. M Tuttle provided a brief overview to the strategies under the mobility, parks, stormwater and brownfield themes. What changes should the LRPC make to these elements?

A Montroll: The section on mobility presupposes that the Champlain Parkway will be built, but has already been delayed for so long. There may be some things to take care of now, rather than wait for the Parkway. For example, the South End plan should address the Pine Street traffic backups at certain times of the day as a priority. There is a recommendation for stoplights on Pine Street as part of the Parkway implementation, but should be an approach to dealing with present traffic patterns if we will actually realize the vision of the plan.

H Roen: Starting with the Champlain Parkway in the plan is controversial in itself. Agree that we should identify the items that we want regardless of the Parkway's success.

B Baker and Y Bradley agree.

Y Bradley: The question for the Commission is: is this a separate task from planBTV South End?

D White: In this section of the plan, he appreciates that the Parkway is controversial and agrees that the Maple Street intersection is problematic. The big picture is that all of these things need to happen, and we need to do something to increase connectivity for that area.

Y Bradley: It is a good position statement to say that while we envision Champlain Parkway being implemented, please make sure that we can do something regardless of whether the Parkway goes forward.

A Montroll: Poor traffic flow along Pine Street corridor will hamper our vision for the plan.

All Commissioners present agreed that this is something that should be added.

H Roen: Strategies about connectivity enhances the link to the lake, but what about the stormwater problems in the area? The plan doesn't seem to touch on these problems.

M Tuttle: The presentation tonight is a much distilled version/summary. However, we can make sure that stormwater information from Phase I studies is incorporated in the plan.

Y Bradley: For the Brownfield section, wonder if DEC is a friend or foe? The Seven Days article about dirty soils comes to mind. The cost of the South End's redevelopment with soil that needs to be cleaned up seems to be staggering. We need to think about how we work together with DEC. The plan needs a dose of reality that talks about soils, not just brownfields, as a hurdle to development. Also, need to include a piece about creating partnerships with private properties—a lot of what is envisioned in the plan is on property that the City does not own.

D White: The city has been in partnership with other cities around state that have made progress on their obstacles around soils.

Y Bradley: It is important to call that out so that people are aware.

A Montroll: It's not just about brownfields, it's about all soils, including urban soils.

Y Bradley: This complication raises the cost of doing urban infill development, the result could be sprawl.

A Montroll: Are the plan's recommendations regarding connectivity to the waterfront strong? This is important.

D White: It has been discussed extensively.

M Tuttle: The maps are in the second part of plan, which really shows locations where strategies about "connectivity" could be applied. We're aware that there is a need to strengthen the connection between the maps and the text. We are starting to forward edits to Goody Clancy and hoping to have a major revision at some point in April.

Y Bradley: It has been a lot of work and thanks.

I Avilix: Is concerned about traffic and recommend a traffic study, with a suggestion for a light at Maple and King. Many people would suggest a roundabout, rather than a traffic light. Would traffic experts examine the approach before a decision is made?

## **VII. Proposed CDO Amendment: 15 Year Statute of Limitations**

Y Bradley: We are here to hear both parts of the conversation. Thank you to staff, there was no real way to interject back and forth at the previous meeting.

S Gustin: We should focus on the meat of the 15 year statute amendment, and later discuss the staff's position on the Diemer situation if the Commission wishes.

Y Bradley: Great idea.

K Sturtevant went through a chart addressing the differences between grandfathering and situations to which the statute of limitations applies.

Y Bradley: If an owner has a four unit building, zoning records show three units, and one unit is empty does it go away after 60 days? This might need to be further clarified.

D White: We might have a precedent for a pre-existing non-conformity has stopped and it has been grandfathered but it is actively being marketed.

Y Bradley: The idea is to be predictable and have an approach that is not to necessarily be permissive and but also not punitive.

D White: Important to make the distinction, because even though they're similar, they do appear in different sections of the ordinance. The new ordinance language appears as a new entry in the enforcement section of the ordinance.

B Baker: Putting in the enforcement section and not stating the commonality between these uses and legal non-conforming uses seems to overlook the relationships. We are trying to create predictability.

K Sturtevant: Will address the current version of the ordinance. Defines what being aware means. The burden of proof is established with the burden on the owner. This type of status is hard to label, so at this point have added the term of "stabilized status". It requires a determination from the Zoning Office. Indicates that when there is a safety problem, must come into compliance.

Y Bradley: What documentation is necessary?

S Gustin: It depends on the type of violation.

A Montroll: It is good that the burden of proof remains with the owner, but the language defining the City's awareness of a violation for 15 years should be clarified.

Y Bradley: "Preponderance of evidence" is still really ambiguous. Need assurance that the Planning & Zoning records will not override all other City records.

S Gustin: Preponderance of evidence is an established term which means precisely what we're saying.

B Baker: We need to limit the scope of the investigation. Should refer back to the departments listed above as the records that qualify for proof.

J Rippa: Regarding the 60 day issue for a discontinued use, what if an owner was working on a rental unit and the renovations take longer than 60days? It's still a rental unit, but it just doesn't have occupants due to a delay. Shouldn't be penalized as discontinuance.

B Baker: Renovation of a unit is continuing use as rental unit—this is part of the business of having a rental unit. Are there cases like this?

K Sturtevant: Don't know that there are cases on statute of limitations discontinuance of use.

B Baker: May need to add a clause to articulate what situations do not constitute discontinuance.

S Gustin: We can clarify in a consistent way with other language we have established in the ordinance.

D White: Struggled with what to call these situations, but we need to have a name for these conditions.

A Montroll: Suggest that just pick a name and include a definition of it either in Article 13 or in this section because it is not necessarily clear today what it is.

D White: This written determination is something that people can take to the bank, has a notice process, has appeal rights, and goes in the land records.

A Montroll: The section on notice is important. Add that anyone who has filed a formal complainant should be noticed.

D White: Some of it is about practical procedures in the department.

B Baker: Perhaps a FAQ would be helpful. There are two problems: we have poor records and enforcement is much more serious now. People can't be cavalier now, and it doesn't seem fair. This change will impact hundreds if not thousands of units in the City.

A Montroll: These situations have to be counterbalanced with what people are actually allowed to do and how these illegal uses impact neighbors. There seem to be a lot of gray areas.

Y Bradley: There is a difference between a property that is a non-conforming use which has been problem, and a conforming property with a problematic tenant. If notice is given to anyone that has filed a complaint, does that accomplish what you are looking for?

A Montroll: A letter from the city saying property is okay (complying), vs a letter stating the condition is older than fifteen years are different things.

Y Bradley: As an example say someone bought a four unit building. Planning & Zoning doesn't have a record of the property as being a four unit. Now the regulations have changed. Is that what you're trying to protect?

K Sturtevant: The whole point is to clear up the 15 year definition, except for health and safety violations.

D White: There is a process with the DRB to sort out these issues.

Y Bradley: Are we satisfied that this accomplishes what we asked for?

A Montroll: An example of someone putting in vinyl windows, can't make them take them out, but can make them replace them when they need to be replaced?

D White: That is correct.

*Approved by the Planning Commission on February 23, 2016*

B Baker: Need to clarify use and construction violations and how they apply to the statute of limitations.

K Sturtevant: Language says "for use, dimensional, or otherwise..."

Y Bradley: Not quite at closer, we likely need a few more tweaks. Thanks to both K Sturtevant and S Gustin. The documents they have presented tonight reflects well on the department representing fair treatment for the public and doing what the Commission has asked.

J Rippa: Would suggest this include defining change or discontinuance vs routine maintenance and repair.

## **VIII. Committee Reports**

Long Range Planning Committee: H Roen reports that the last meeting didn't happen, due to lack of quorum; next meeting Feb. 18<sup>th</sup> at noon at Public Works.

Ordinance Committee: B Baker reports the same issue for the Ordinance Committee.

Executive Committee: D White reports they did meet and discussed many of the issues on tonight's' agenda.

## **IX. Commissioner Items**

None.

## **X. Minutes/Communications**

On a motion by B Baker, seconded by A Montroll, the Commission unanimously approved the minutes of January 26, 2016.

On a motion by A Montroll, seconded by H Roen, the Commission unanimously accepted the communications and placed them on file.

## **XI. Adjourn**

On a motion by H Roen, seconded by A Montroll, the Commission unanimously voted to adjourn at 8:21 pm.



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Y Bradley, Chair

Signed: February 26, 2016



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E Tillotson, Recording Secretary